

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STANDARD PROCESS, INC.,

Plaintiff,
v.

KDEALZ LTD. CO. and JOHN DOES 1-100,

OPINION & ORDER

17-cv-909-jdp

Defendants.

Plaintiff Standard Process, Inc., manufactures nutritional supplements and sells them exclusively through authorized resellers. It has filed suit against defendant KDealz Ltd. Co. for trademark infringement and related claims. It alleges that KDealz is selling Standard Process products online without authorization. KDealz responded to Standard Process's complaint by filing a motion to dismiss. Dkt. 9. On June 20, the court denied the motion. Dkt. 20. Under Federal Rule of Civil Procedure 12(a)(4)(A), KDealz had 14 days to file its answer. But it didn't. So Standard Process requested entry of default against KDealz, Dkt. 21, prompting KDealz to move for leave to file its answer out of time. Dkt. 23.

Rule 55(a) provides that default must be entered against a party against whom affirmative relief is sought, but who fails "to plead or otherwise defend." KDealz failed to file a responsive pleading by the deadline, but no one could say that it has failed to otherwise defend. So the court will not enter default against KDealz.

As for KDealz's motion to file its answer past the deadline, district courts have discretion to allow late filings; the decision is an equitable one, taking into account the prejudice to the opposing party, the length of the delay, the reason for the delay, and the movant's good faith. *See Simstad v. Scheub*, 816 F.3d 893, 899 (7th Cir. 2016). Here, the delay

is less than two weeks, and there is no potential prejudice to Standard Process, as the preliminary pretrial conference has yet to be scheduled in this case. The reason for the delay appears to be a misunderstanding about the status of the answer deadline based on the court's earlier decision to strike the preliminary pretrial conference. This is not exactly a compelling reason, but there's no reason to doubt KDealz's good faith in seeking leave to file its answer now. So the court will allow KDealz to file its answer.

ORDER

IT IS ORDERED that:

1. Plaintiff Standard Process, Inc.'s motion for default, Dkt. 21, is DENIED.
2. Defendant KDealz Ltd. Co.'s motion for leave to file answer, Dkt. 23, is GRANTED. Defendant is directed to file its answer as a separate entry on the docket.
3. The clerk of court is directed to schedule a telephonic preliminary pretrial conference before Magistrate Judge Stephen L. Crocker.

Entered July 19, 2018.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge